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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/072,800

01/31/2002

John T. McDevitt

5936-00543

6961

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7590

05/04/2006

LABNOW, INC.

BARTON OAKS PLAZA TWO

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EXAMINER

LAM, ANN Y

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/072,800

Applicant(s)

MCDEVITT ET AL.

Examiner

Ann Y. Lam

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 342 and 460-494.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


LONG V. LE
SUPERVISORY PATENT EXAMINER
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Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant states on pages 3-4 and page 11 that the Sanadi gasket contributes to confinement of samples within wells and that a lid must be used in combination with the gasket to inhibit displacement of the samples from the containment sites. Applicant asserts that the cited art does not appear to teach or suggest choosing particle size or gasket opening diameter such that the gasket, being smaller than the opening of the top part of the cavity substantially inhibits displacement of the particle from the cavity when the particle contacts the gasket, as asserted by Examiner in the Office action. This argument is not persuasive because, as indicated in the Office action, the particle claimed by Applicant is disclosed by Kurn et al. The gasket taught by Sanadi is capable of performing the intended use as recited by Applicant. Applicant also argues on pages 5-14 that for the reasons stated above, the features of the other claims, in combination with the features of independent claim 342, do not appear to be taught or suggested by the cited art. These arguments are not persuasive because Applicant's argument regarding claim 342 stated above is not persuasive for the reasons stated above by Examiner, and the features of each claim are disclosed by the cited references as indicated in the Office action. Applicant also argues on pages 14-15 that with respect to the 103 rejection under Unger et al. in view of Kurn, the subject matter described in the Office action relating to the Unger reference has a priority date of November 28, 2001, which is later than Applicant's date, because the subject matter is not described in the parent application, U.S. Patent No. 6,899,137. This argument is not persuasive because the subject matter regarding an actuated membrane, as indicated in the Office action, is disclosed in the parent application, and thus this subject matter is given the priority date of the parent application and its corresponding provisional application. Applicant also argues on pages 15-16 that for the reasons stated above, the features of the other claims, in combination with the features of independent claim 342 do not appear to be taught or suggested by the cited art. This is not persuasive because the cited art discloses the features as indicated in the Office action and as reasserted above.